

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHANE BROOKS,
Plaintiff,

v.

RENEE BAKER, et al.,
Defendants.

Case No. 3:15-cv-00449-RCJ-VPC

Order

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On February 12, 2016, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 4 at 11-12). Plaintiff has filed an “emergency motion” requesting an extension to file his amended complaint. (ECF No. 7).

A) Request for Extension

In his motion, Plaintiff asserts that he believes his complaint set out details necessary to support his civil rights violation allegations. (*Id.* at 2). The Court provided analysis and conclusions in its original screening order specifying the deficiencies in Plaintiff’s complaint. (*See generally*, ECF No. 4). Plaintiff was granted leave to correct those deficiencies in an amended complaint. (ECF No. 4 at 11-12). Plaintiff seeks to amend his complaint, but asserts that he cannot amend the complaint because necessary exhibits are not currently in

1 his possession. (ECF No. 7 at 8).

2 Plaintiff need not attach exhibits in order to state a colorable claim for relief. Review
3 under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel v. Lab. Corp.*
4 *Of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper
5 only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that
6 would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).
7 In making this determination, the court takes as true all allegations of material fact stated in
8 the complaint, and the court construes them in the light most favorable to the plaintiff. See
9 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
10 complainant are held to less stringent standards than formal pleadings drafted by lawyers.
11 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
12 require detailed factual allegations, a plaintiff must provide more than mere labels and
13 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
14 of the elements of a cause of action is insufficient. *Id.*

15 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
16 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 662, 679 (2009). “While legal conclusions can provide the
18 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there
19 are well-pleaded factual allegations, a court should assume their veracity and then determine
20 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
21 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
22 reviewing court to draw on its judicial experience and common sense.” *Id.*

23 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
24 *sponte* if the prisoner’s claim lack an arguable basis either in law or in fact. This includes
25 claims based on legal conclusions that are untenable (e.g., claims against defendants who
26 are immune from suit or claims of infringement of a legal interest which clearly does not exist),
27 as well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).

1 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d
2 795, 798 (9th Cir. 1991).

3 Plaintiff need only provide a “short and plain statement of the claim showing that [he]
4 is entitled to relief,” and present allegations that are “simple, concise, and direct.” Fed. R. Civ.
5 P. 8(a), (d). As such, Plaintiff need not provide detailed exhibits, and should focus on
6 addressing the deficiencies identified by the Court in its initial screening order.

7 **B) Separate Constitutional Claims**

8 Plaintiff alleges a due process claim, an unconstitutional conditions of confinement
9 claim, and a violation of access to the courts claim in his emergency motion, and he asks
10 injunctive relief in the form of a court order directing defendants to return property he deems
11 illegally withheld. (ECF No. 7 at 3-11). Plaintiff’s claims should be submitted in the form of
12 a separate complaint detailing the violations and his request for relief.

13 **C) Lack of Paper**

14 Plaintiff notes that he had to borrow stationery from another inmate in order to write his
15 motion and asserts that he had to file an emergency motion due to his lack of legal supplies.
16 (ECF No. 7 at 13). The Court finds Plaintiff was able to file his fourteen page motion before
17 the thirty day deadline set by the Court in its initial screening order. Moreover, the Court will
18 resend the approved form for filing a § 1983 complaint, which will enable Plaintiff to comply
19 with this order and file his amended complaint.

20 **D) Leave to Amend**

21 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of the
22 complaint. If Plaintiff chooses to file an amended complaint he is advised that an amended
23 complaint supersedes the original complaint and, thus, the amended complaint must be
24 complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,
25 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint
26 is irrelevant; an amended pleading supersedes the original”); see also *Lacey v. Maricopa*
27 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a
28

1 plaintiff is not required to reallege such claims in a subsequent amended complaint to
2 preserve them for appeal). Plaintiff's amended complaint must contain all claims, defendants,
3 and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must
4 file the amended complaint on this Court's approved prisoner civil rights form and it must be
5 entitled "First Amended Complaint."

6 The Court hereby provides Plaintiff an additional thirty (30) days to file his amended
7 complaint. If Plaintiff chooses not to file an amended complaint curing the deficiencies stated
8 in the initial screening order, this action shall be dismissed.

9 **CONCLUSION**

10 For the foregoing reasons, IT IS ORDERED that Plaintiff's emergency motion (ECF
11 No. 7) is granted in part and denied in part.

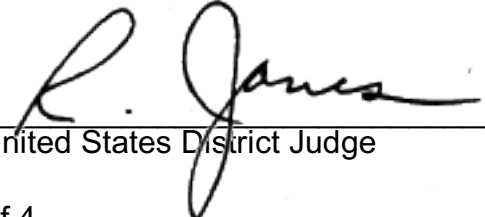
12 IT IS FURTHER ORDERED that Plaintiff shall file his amended complaint within
13 thirty (30) days from the date of entry of this order. No further extension shall be provided.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the
15 approved form for filing a § 1983 complaint, instructions for the same, a copy of his original
16 complaint (ECF No. 5), and a copy of the Court's initial screening order (ECF No. 4). If
17 Plaintiff chooses to file an amended complaint, he must use the approved form and he
18 shall write the words "First Amended" above the words "Civil Rights Complaint" in the
19 caption.

20 IT IS FURTHER ORDERED that if Plaintiff chooses not to file an amended
21 complaint curing the stated deficiencies of the complaint, this action shall be dismissed.

22 IT IS FURTHER ORDERED that Plaintiff's request for the Court to order defendants
23 to return property he deems illegally withheld is DENIED.

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25 DATED this 6th day of April, 2016.

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27 
28 United States District Judge